

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: MDL Docket No 06-1791 VRW  
NATIONAL SECURITY AGENCY ORDER  
TELECOMMUNICATIONS RECORDS  
LITIGATION

This document relates to:

Anderson, et al v Verizon  
Communications Inc, et al, No C  
07-2029

Joll, et al v AT&T Corp, et al,  
No C 06-5485 VRW

Herron, et al v Verizon Global  
Networks, Inc, et al, No C  
06-5343 VRW

Lebow, et al v BellSouth  
Corporation, et al, C 07-0464 VRW

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Plaintiffs in the first of the above-captioned actions,  
Anderson, et al v Verizon Communications, Inc, et al, No C 07-2029,  
have moved for leave to file a motion for reconsideration of the  
court's order dated June 3, 2009 (Doc #639) dismissing with leave  
to amend all cases in this multidistrict litigation (MDL) matter

1 that were subject to the government defendants' motion to dismiss  
2 (Doc #469). Doc #648. By the same motion, plaintiffs in the  
3 remaining three cases listed on the caption (represented by the  
4 same counsel as the Anderson plaintiffs) seek leave to file a  
5 motion for reconsideration of the court's dismissal, by the same  
6 June 3 order, of the Bellsouth Master Consolidated Complaint (Doc  
7 #126). The movants assert that their motion is warranted because  
8 "there has been a manifest failure by the Court to consider  
9 material facts which were presented to the Court before the June 3  
10 Order and which show that the above-captioned Complaints contain  
11 allegations outside the limited coverage of the [FISA Amendments  
12 Act of 2008, Pub L No 110-261, 122 Stat 2436 (FISAAA)]." Doc #648  
13 at 2. Specifically, the movants cite allegations in the complaints  
14 at issue that actionable activities commenced in February of 2001.

15 The movants have complied with Civil Local Rule (LR) 7-  
16 9(a), which requires seeking leave of court before moving for  
17 reconsideration and doing so before judgment is entered. Civil LR  
18 7-9(b) governs the form and content of a motion for leave,  
19 requiring that the moving party specifically show:

20 (1) That at the time of the motion for leave, a  
21 material difference in fact or law exists from that  
22 which was presented to the Court before entry of the  
23 interlocutory order for which reconsideration is  
24 sought. The party also must show that in the exercise  
25 of reasonable diligence the party applying for  
reconsideration did not know such fact or law at the  
time of the interlocutory order; or

26 (2) The emergence of new material facts or a change of  
27 law occurring after the time of such order; or

28 (3) A manifest failure by the Court to consider  
material facts or dispositive legal arguments which  
were presented to the Court before such interlocutory  
order.

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1                   The movants rely on 7-9(b) (3) in seeking reconsideration.  
2 The court agrees with the movants that some or all of the  
3 complaints in the MDL contain allegations that either contain no  
4 specifics as to the time of the alleged conduct or include dates  
5 outside the temporal limitation of the retroactive immunity  
6 conferred by FISAAA, September 11, 2001 to January 17, 2007. 50  
7 USC § 1885a(a)(4)(A)(i). But the court did not fail to consider  
8 this obvious aspect of the complaints. The court dismissed the  
9 complaints without prejudice, affording plaintiffs "an opportunity  
10 to amend their complaints if they are able \* \* \* to allege causes  
11 of action not affected by the Attorney General's successful  
12 invocation of section 802's immunity." Doc #639 at 45.

13                   The movants assert that it was error for the court to  
14 dismiss "that portion of the [McMurray] complaint that alleges  
15 violations prior to September 11, 2001" and that the court should  
16 have allowed those plaintiffs "to proceed with all their claims  
17 \* \* \* for actions undertaken prior to September 11, 2001." Doc  
18 #648 at 3. The court disagrees.

19                   Plaintiffs have been given leave to amend their  
20 complaints "to allege causes of action not affected by the Attorney  
21 General's successful invocation of section 802's immunity" and have  
22 elected not to do so within the time provided.

23                   For the reasons stated, the motions for leave to file  
24 motions for reconsideration are DENIED. This order affects: In Re  
25 National Security Agency Telecommunications Records Litigation  
26 M 06-1791 Doc #648; Anderson, et al v Verizon Communications Inc,  
27 et al, No C 07-2029 Doc #20; Joll, et al v AT&T Corp, et al, No C  
28 06-5485 Doc #28; Herron, et al v Verizon Global Networks, Inc, et

1 al, No C 06-5343 Doc #27; Lebow, et al v BellSouth Corporation, et  
2 al, C 07-0464 Doc #23.

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4 IT IS SO ORDERED.

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8 VAUGHN R WALKER  
United States District Chief Judge

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